IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4737 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI MANEKLAL MODI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4737 of 2004

MR AG VYAS for Petitioner

MR RM CHAUHAN APP for RespondentS

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. RULE. Waived by learned APP Mr. R.M. Chauhan for

respondents No. 1 and 2. Upon request of learned Advocates for the parties, the Rule was heard forthwith.

2. Learned Advocate Mr. A.G.Vyas for the petitioner and learned APP Mr. R.M. Chauhan for the respondents were heard at length. Respondent No.2 in person present in the Court to assist the learned APP Mr.R.M.Chauhan.

3. This petition is preferred for quashing the First Information Report dated 22nd of November, 2003, bearing Crime Register No.II 70/2003 registered at Jawahar Nagar Police Station. As per the facts of this case, respondent No.2 is Sales Tax Inspector, Baroda, while present petitioner was Director of Genecol Industries Limited in 2001-2002. The petitioner filed Form No.32, copy of which is placed at page No.8, resigned as Director from the said Company by addressing to the Registrar of Companies, Maharashtra, on 11th of March, 2002. He also completed necessary formalities and, therefore, a Resolution came to be passed on 27th of March, 2002, copy of which is placed at page 11 that the resignation of the petitioner as Director of the said Company was accepted from 8th of March, 2002. This was signed by Company Secretary as well. However, for the period of April 2002 to March 2003, Office of Assistant Sales Tax Commissioner, issued Notice dated 30th of August, 2003 to the petitioner that his company had not paid sales tax from April 2002 to March 2003. Not paying the sales tax constitutes offence under Rule 31 of the Rules of the Gujarat Sales Tax Rules. It is also an offence under the Rules of Central Sales Tax Act and, therefore, he was informed to appear before the Assistant Commissioner on 15th of September,2003 at 11.00 hours. In reply to the said Notice, vide letter dated September 15, 2003, present petitioner informed Assistant Sales Tax Commissioner that he was relieved from the duty of the Director of the said company from 8th of March, 2002 and, therefore, he would not be aware of any matters relating to the Genecol Industries Limited for the said financial year i.e. April 2002 to Marc 2003. Reply of this letter which is dated September 15, 2003 by the Office of the Assistant Sales Tax Commissioner is not in dispute. However, a complaint under Rules of the Gujarat Sales Tax came to be filed by the respondent No.2 against the present petitioner in respect of above fact on 26th of November, 2003. Therefore, this petition for quashing.

4. On behalf of the respondents, it is stated that vide his letter dated 15th of September, 2003, petitioner did not submit Form No. 32 or any evidence that he was relieved from the duty as Director of the Company and,

therefore, according to law, complaint came to be filed.

5. Without discussing whether was it or was it not necessary further to submit any evidence as to the resignation of the petitioner which came into effect from 8th of March, 2002, the fact remains that the present petitioner was relieved from his duties as a Director of the said Company right from 8th of March, 2002 as evidenced by the Resolution passed and signed by the Company Secretary. In this view of the matter, when petitioner cannot be held liable for the action, for which the complaint came to be filed by the respondent No.2, it could not be said that since he failed to produce evidence of his relieving as a Director, criminal complaint should be proceeded against him.

6. Anyhow, since the petitioner was not responsible for the relevant period for the affairs of the company, the complaint is required to be quashed.

7. In the result, this Application is allowed. First Information Report filed by the respondent No.2 before Jawahar Nagar Police Station bearing Crime Register No. II 70/2003 is hereby quashed and set aside as against petitioner. However, respondent No.2 and the Sales Tax Department will be at liberty to take any action against responsible persons of the said Company if the same is permissible by law. Rule is made absolute to that extent.

(J.R. Vora, J.)

p.n.nair